

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRIEME ENERGY HOLDINGS, INC. and
TRIEME ENERGY DEVELOPMENT, LLC,

Plaintiffs,

-against-

INNOGY RENEWABLES US LLC, et al.,
Defendants.

20-cv-05015 (JLR) (BCM)

ORDER

JENNIFER L. ROCHON, United States District Judge:

For the reasons stated on the record during the June 8, 2023 conference and oral argument, the Motion in Limine (ECF No. 170) is DENIED in part and GRANTED in part. The Court strikes the following from the BRG Expert Report (ECF No. 172-3): (1) the purported testimony that “Innogy never seriously considered post-COVID acceleration strategies for Cassadaga” (*id.* at 23); and (2) the Opinion 4 that: “Based on industry experience, it is my opinion that but for the change in the tax credit deadline from 2020 to 2021, Innogy would have taken reasonable measures, including but not limited to acceleration, to ensure completion of the Cassadaga Project in 2020” (*id.* at 29). The Court also strikes the following statements from the Whalen Expert Report (ECF No. 172-7): (1) Defendants “did not appear to consider acceleration of construction as the key mitigant to the risk of losing the renewable energy tax credits” (*id.* ¶ 6.32); and (2) “achieving COD in 2020 was a primary driver for Innogy’s construction schedule for the Cassadaga Project” (*id.* ¶ 4.5). The motion to preclude is otherwise DENIED.

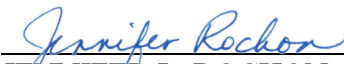
Defendants shall inform the Court by June 15, 2023 whether they intend to move for summary judgment and, if so, present a proposed briefing schedule agreed upon by the parties. If

Defendants do not intend to file a motion for summary judgment, the Court will schedule a video conference to determine the schedule for pre-trial submissions and the bench trial.

Dated: June 9, 2023

New York, New York

SO ORDERED.



JENNIFER L. ROCHON
United States District Judge